

Exhibit B

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

5
6 CONSIST SOFTWARE SOLUTIONS, INC.,

7
8
9 Plaintiff,

10
11 vs.

12 SOFTWARE AG, INC. and SOFTWARE AG

13 Defendant.
14
15 -----x

16
17 November 5, 2007

18 10:14 a.m.

19
20 H I G H L Y C O N F I D E N T I A L
21 ATTORNEYS' EYES ONLY
22

23 Deposition of NATALIO S. FRIDMAN, held
24 at the offices of Baker & McKenzie, 1114
25 Avenue of the Americas, New York, New York
10036, before David Henry, a Certified
Shorthand Reporter and Notary Public of the
State of New York.

HIGHLY CONFIDENTIAL

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1 Fridman - CONFIDENTIAL - ATTORNEYS' EYES ONLY
 2 we want an evergreen contract, no
 3 termination. To do any termination, have
 4 to be a reason for terminate, and we always
 5 be careful not to have any reason to
 6 terminate a contract, very careful.
 7 **Q. Did you ask Software AG to drop**
 8 **the first sentence of paragraph 7?**
 9 A. I think, I don't remember. But
 10 it was after.
 11 **Q. Did you ask Software AG that --**
 12 A. Yes, because that doesn't make
 13 sense in the text. It doesn't make sense
 14 in the text, you know. I mean, these are
 15 before any termination, but any
 16 termination, we got there, there are other
 17 reasons for termination here, no, no
 18 terminations, reason for material breaches,
 19 okay, there are material breach, a reason,
 20 okay, so we want to be sure that
 21 everything, we continue working. I
 22 remember this was after the shock of the
 23 cancellation of the contract, that from the
 24 beginning maybe, we were since 1995
 25 exclusive distributors and never was a

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 2 (Recess taken.)
 3 FURTHER EXAMINATION BY MR. JACOBS:
 4 **Q. Mr. Fridman, Consist wants the 98**
 5 **agreement to automatically renew for**
 6 **another five years, correct?**
 7 A. Yes.
 8 **Q. Consist is generally satisfied**
 9 **with the terms of the 98 agreement,**
 10 **correct?**
 11 A. Pardon?
 12 **Q. Consist is generally satisfied**
 13 **with the terms of the 98 agreement?**
 14 A. Yes, sir.
 15 **Q. Are there any terms in the 98**
 16 **agreement that you would like changed?**
 17 MR. SCHAFFER: Objection. This
 18 is utterly irrelevant, utterly
 19 speculative, has no bearing whatsoever
 20 on any issue in this case. And unless
 21 you can articulate a reason for it,
 22 I'm going to instruct him not to
 23 answer.
 24 MR. JACOBS: I think it's very
 25 relevant.

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 2 contract even for 10 years before.
 3 **Q. Let me ask the question, because**
 4 **I haven't -- let me finish the question if**
 5 **I may.**
 6 **Did you ask Software AG to make**
 7 **paragraph 7 mutual so both parties would**
 8 **have the same cancellation rates?**
 9 A. Yes, yes, maybe yes. I don't
 10 recall it, but maybe yes, because I had a
 11 good reason for that.
 12 **Q. Do you recall who suggested the**
 13 **particular wording of paragraph 7?**
 14 A. Maybe I was, I don't know.
 15 **Q. You don't know?**
 16 A. I don't know. Maybe I was the
 17 one.
 18 **Q. Maybe you were, maybe Mr. Daly**
 19 **was?**
 20 A. Could be, I don't know.
 21 **Q. Do you recall what you said to**
 22 **Mr. Daly about paragraph 7?**
 23 A. I cannot recall the words. I
 24 want to say that any -- and any
 25 termination, I wanted notice, okay?

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 2 MR. SCHAFFER: To what issue?
 3 MR. JACOBS: It has to do with
 4 the relevance of his position and the
 5 credibility of the position itself.
 6 MR. SCHAFFER: I believe that
 7 is utterly fallacious. He wants to
 8 renew the agreement on its terms,
 9 period. He doesn't have to tell you
 10 whether there are terms that in theory
 11 he might change. He wants the
 12 agreement renewed. He believes it is
 13 renewed. What conceivable relevance
 14 does this have to anything?
 15 MR. JACOBS: Well, I believe it
 16 does.
 17 MR. SCHAFFER: You don't have
 18 to answer that question. You can tell
 19 him if you want to. You don't have
 20 to, it has nothing to do with this
 21 lawsuit. It has to do with some
 22 business negotiation.
 23 MR. JACOBS: Did you instruct
 24 him not to answer? Did I understand
 25 that?

43 (Pages 166 to 169)

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2 **Q. Who participated in the**
 3 **negotiations that culminated in the 98**
 4 **agreement?**

5 A. 98 agreement, Jim Daly, myself,
 6 and Mr. Schafrann also.

7 **Q. Did Neil Rothberg participate?**

8 A. No, only -- I don't recall, he
 9 came to our office. No, Rothstein --
 10 nothing to do with that, I don't think so.
 11 He send information, but I don't know if it
 12 was an invoice. Not directly in discussion
 13 with us. Jim Daly was in discussion with
 14 us.

15 **Q. Is Mr. Schafrann still your**
 16 **Consist attorney?**

17 A. Mr. Schafrann is 89 years old,
 18 okay? He had an office until recently at
 19 277 Park Avenue. He had to sign a ten year
 20 lease, and he doesn't feel to sign. Now
 21 his office is in my office, okay? 89 years
 22 old. He still has a good memory.

23 **Q. Did Mr. Schafrann attend all the**
 24 **negotiation sessions?**

25 A. I don't recall, but when he was

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2 A. I don't recall that. I recall
 3 daily, I don't recall that.

4 **Q. Did anyone take notes at that**
 5 **meeting?**

6 A. No.

7 **Q. Mr. Schafrann didn't have a habit**
 8 **of taking notes?**

9 A. I don't remember.

10 **Q. Mr. Schafrann was an attorney of**
 11 **yours for a long time?**

12 A. Since 69. No, 68 or 67.

13 **Q. And based upon your recollection,**
 14 **did Mr. Schafrann often take notes?**

15 A. I don't recall it. Maybe two
 16 notes, I don't recall it.

17 **Q. Did you take notes during the**
 18 **meeting?**

19 A. If I take notes, if I made it,
 20 afterwards I cannot read it.

21 **Q. So the answer is --**

22 A. I never take notes. I cannot
 23 read my handwriting.

24 (Recess taken.)

25 FURTHER EXAMINATION BY MR. JACOBS:

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2 in New York, Jim Daly, I try to involve
 3 him.

4 **Q. On the telephone calls, were the**
 5 **telephone calls --**

6 A. I don't know. I would say the
 7 following. We're very intense in
 8 negotiations, very short one, because I
 9 remember on August 26, I saw, I remember
 10 now because I saw, he send the proposal to
 11 contract, ready to sign, he came and we
 12 changed everything. And the contract was
 13 signed, dated September 9.

14 **Q. So the negotiation session which**
 15 **you just referred to occurred after August**
 16 **26 and before September 9, correct?**

17 A. Yes.

18 **Q. And that occurred in New York?**

19 A. In New York.

20 **Q. And you attended that session?**

21 A. Of course.

22 **Q. And Mr. Daly attended that**
 23 **session?**

24 A. Yes, and Mr. Schafrann also.

25 **Q. And Mr. Rothberg also?**

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2 **Q. Mr. Fridman, I want to tell you**
 3 **much I appreciate your patience today.**
 4 **Just two questions.**

5 **Other than the agreement, are**
 6 **there any other documents that support your**
 7 **view that the 98 agreement is an evergreen**
 8 **contract?**

9 A. The evolution of the contract.

10 **Q. And what do you mean by that, by**
 11 **the evolution of the contract?**

12 A. That this was done, we did it, in
 13 a rush, according to them, okay, with Jim
 14 Daly, and we make all the changes to be an
 15 evergreen contract because we wouldn't
 16 accept that contract the way they wrote it,
 17 okay?

18 **Q. But can you point to any other**
 19 **document other than the agreement which**
 20 **supports your contention that the 98**
 21 **agreement is an evergreen contract?**

22 MR. SCHAFFER: I think what
 23 he's just said is that if you are
 24 including within that the drafts of it
 25 and of predecessor agreements and the

55 (Pages 214 to 217)